WEBINAR SERIES ON ROUTES TO IMMIGRATION STATUS FOR NON-CITIZEN CRIME SURVIVORS

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Bringing in Family Members Living Abroad and Preparing the Adjustment of Status Application
Facilitators: Cecelia Friedman Levin, Maria Lazzarino, and Sonia Parras Konrad
At the end of this session, you will be better able to...

1. Identify any potential qualifying relatives eligible for benefits at the time of adjustment

2. Preempt potential RFE and roadblocks as it relates to family members

3. Assist qualifying relatives entering the United States
Important Resources

• 2016 VSC Practice Advisory

• ICWC Zoho Database on Consular Processing

• Foreign Affairs Manual
  https://fam.state.gov/

• ILRC Videos on Consular Processing
ELIGIBLE DERIVATIVES
HYPO

Your client Sofia has a 4 year U visa expiring in May 2017. You filed for adjustment. She asks if you could help her “other daughters.” She misunderstood your question about children when you asked because she thought you were only asking for the ones living in the USA. What do you do if she tells you that she has 2 more daughters abroad?

– Her daughter Anita will turn 19 in April 2017 when the Supp. A was never filed for her?

– Her other daughter will turn 21 in May
  • She just found out that she is 6 months pregnant, what else could you do?
## Derivatives

### When applying for U visa

<table>
<thead>
<tr>
<th>If applicant is &lt; 21:</th>
<th>If applicant is &gt; 21:</th>
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<tbody>
<tr>
<td>• spouse, children, parents and unmarried siblings under age 18</td>
<td>• spouse, minor children (unmarried and under 21)</td>
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**Note:** VAWA 2013 Age-out Protections apply

### In context of I-929

<table>
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<th>If applicant &gt; 21:</th>
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<tr>
<td>• spouse (including if the marriage occurred AFTER the U grant) and minor children (unmarried and under 21)</td>
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**Note:** NO Age-out Protection for derivatives
I-929 Requirements

• Principal has U visa based LPR status or application for adjustment pending
• Eligible family member (see previous)
• You or family member will suffer extreme hardship if not allowed to remain in or enter the US
• Establish discretion should be exercised in favor of family member
Important Considerations

• I-929 process only available to those who NEVER had U visa status
• NO Age-OUT protections: Child must remain unmarried and under 21 until I-929 approved.
• NO I-192 for Inadmissibility Required
• I-929 will not be decided until U-1 adjustment approved.
Timing Issues

• During AOS (U-1 about to expire and determining best strategies)
  – I-918 about to expire
    • I-539 + AOS- hold in abeyance- cross reference
  – QR minors close to age out
  – QR minors way under 21
U Visa Extensions – I-539

• For whom do you file and when?

• If filing late:
  – the delay was due to extraordinary circumstances beyond your control;
  – The length of the delay was reasonable;
  – You have not otherwise violated your status;
  – You are still a bona fide nonimmigrant; and
  – You are not in removal proceedings.
• Filing fee (or request for a fee waiver)

• Supporting documents directly with the VSC regardless of geographical jurisdiction.
  – Evidence of U status for both principal and derivative, showing all dates in that status;
  – Evidence of adjustment of status of the principal (if applicable);
  – Evidence of relationship with U visa principal;
  – Applicant’s statement of need and reason (s) for extension.
PREVENTING PROBLEMS
Determine Logistics

Work with Client in advance about the process
– When to file?
– What to file?
  • Forms: I-918A, I-912?
  • Proof of Qualifying Relationships
    – BC issues: names, no names, wrong names!!!!

– What are the other outstanding issues?
  • Custody issues for passports
  • Inadmissibility issues for derivatives
Common RFE issues at VSC

– Birth certificate, passport

– Missing documents

– Fingerprints- consideration as abandoned application

– Criminal history and immigration violations
Common Issues at Consulate

– Proof of veracity of birth certificate
– Proof of relationship
  • Honduras, El Salvador (request for DNA, proof of on-going relationship, etc.)
– Medical concerns
  • Drugs, alcohol dependency- teens, gang involvement
  • Prior immigration history
– Waivers not requested
Avoid Problems Up Front

– Identify inconsistencies
  • Determine if they are a problem
    – i.e. Are they material? If not, identify the inconsistency and address why it is NOT material.
  – If the inconsistencies or gaps are material, how would they best be addressed?
    – E.g. Declaration from client, statement from doctor, “partera”, family member, consulate?
    – Explain what are you doing and how much time it may take, keep the case alive
    – Reach out for help! (VAWA experts, attorneys from other countries, civil registry, consulates...).
Biometrics

- No fee
- No U if 14 years or older without your bios
- Know your consulate
  - Electronic or ink depending on counter service
- Card sent to VSC for FBI and checks
- If close to missing appointment, reschedule
- If appointment missed, case will be terminated due to abandonment
  - May be able to reopen
Passport Validity

• Passport must be valid for 6 months beyond initial period of stay
  • Exceptions for certain A, G and NATO visas or if
  • The passport requirement has been waived under INA 212(d)(4); See 9 FAM 403.9-3(B)(1)

• But what about U visa context?
  – Must have reason for not obtaining passport
  – On case by case basis, may use Form DS-232 to issue U visa in absence of passport for U visa
Key Resources

• FAM: Document Availability
  – [www.travel.state.gov/visa/reciprocity/index.htm](http://www.travel.state.gov/visa/reciprocity/index.htm)

• Information on Embassies and Consulates
CONSULAR PROCESSING — AFTER APPROVAL
Ready to go?

• Completed the DS-160
• Print and keep the DS-160 barcode page
• Visit the [U.S. Embassy or Consulate website where you will apply for additional country-specific instructions.](#)
• Schedule an interview appointment; and
• Pay the visa application processing fee.
Evidence Forming Basis for U Visa Issuance

• Post use PIMS created by KCC to verify approval
• Form I-797 Notice of Action may be sufficient proof to schedule appointment
• Instructions:
  – In the event PIMS does not yet contain the record, send an e-mail to PIMS@state.gov. KCC’s Fraud Prevention Unit (FPU) will research approval of the petition and, if able to confirm its approval, will make the details available through the CCD within two working days.
The Motions of Consular Process

- VSC APPROVES I-918 AND SENDS NOTICE TO KCC AND REPRESENTATIVE
- KCC GETS NOTICE PIMS@state.gov
- KCC CREATES RECORD ON PIMS TO BE ACCESSED BY CONSULATES
- MAY CALL YOU
- IF NOT, WAIT 3 WEEKS AND CALL CONSULATE YOURSELF
- APPROVAL NOTICE SENT TO ASSIGNED CONSULATE
STEPS

1. CONSULATE NOTIFIED BY KCC
2. YOU SEND DS-160 AND PACKAGE
3. CHECK PIMS
4. PAY APPOINTMENT
5. GO TO APPOINTMENT INTERVIEW
Consular Process & I-929

Apply for Immigrant Visa (IV) from U.S. Embassy/Consulate (DOS)

NVC Contact

Must travel BEFORE visa expires.
• Passport stamped by CBP upon entry.
• This is the LPR’s date of admission

LPR card issued and mailed to applicant after arrival in U.S. (only if $165 Immigrant Fee has been paid)

Forms:
- DS-3032 (or DS-261)
- DS-230 (or DS-260)
- DS-2001
- I-864W (Do not submit Form I-864)
- Medical Examination

Fees (no fee waiver available):
- $220
- $165 USCIS Immigrant Fee (NEW) before departing to U.S.

Email: NVCAAttorney@state.gov if no contact by NVC after I-929 approval.

No waivers needed – Discretionary
RESOURCES

Website:  www.asistahelp.org

Questions or technical assistance?  
Questions@asistahelp.org

Join VAWAEExperts and VAWAUUpdates lists
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THANK YOU FOR YOUR PARTICIPATION